

EXHIBIT 4

Name Michael J. Woodcock
 Address Correctional Training Facility
P.O. Box 689 D-112UP
Soledad, CA. 93960-0639
 CDC or ID Number H-27629

RECEIVED

SEP 14 2005

CLERK SUPREME COURT

In The Supreme Court of The
State of California.
 (Court)

ORIGINAL

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 SEP 9 - 2005
 CLERK SUPREME COURT

PETITION FOR WRIT OF HABEAS CORPUS

S137247

No.

(To be supplied by the Clerk of the Court)

Michael J. Woodcock
 Petitioner
 vs.
A. P. Kane (Warden)
 Respondent

INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

SUPREME COURT

FILED

SEP 14 2005

Frederick K. Ohlrich Clerk

Deputy

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

This petition concerns:

- ☒ A conviction
 ☐ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: Michael J. Woodcock
2. Where are you incarcerated? Correctional Training Facility.
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

ASSAULT w/GREAT bodily injury.

- b. Penal or other code sections: 245(A)(1), 12022.7A, 1203.(e)(3).

- c. Name and location of sentencing or committing court: Superior Court of the County of Santa Clara, 191 North First Street, San Jose, CA. 95113.

- d. Case number: 202097

- e. Date convicted or committed: September 30, 1998.

- f. Date sentenced: February 4, 1999.

- g. Length of sentence: 28 years to life.

- h. When do you expect to be released? N/A.

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

Denise M. Lee, Alternate Defender Office, 4 North 2nd Street, Suite 1270, San Jose, CA. 95113.

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED WRIT OF HABEAS CORPUS.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED WRIT OF HABEAS CORPUS.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

SEE ATTACHED WRIT OF HABEAS CORPUS.

7. Ground 2 or Ground

(if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):
THE COURT OF APPEAL, STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT.
- b. Result: ABANDONED. c. Date of decision: JANUARY 21, 00.
- d. Case number or citation of opinion, if known: HD19683.
- e. Issues raised: (1) NONE.
(2) _____
(3) _____
- f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:
PAUL CARROLL, 5 MANOR PLACE, MENLO PARK, CA. 94025.
9. Did you seek review in the California Supreme Court? ☐ Yes. ☒ No. If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. Issues raised: (1) _____
(2) _____
(3) _____
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: THE RECENT DECISION IN PEOPLE V. LEWIS (2004), HAS CLARIFIED THE LAW REGARDING A MISINTERPRETED PENAL STATUTE. THIS CLARIFICATION OF LAW AS SHED ERRORS OF CONSTITUTIONAL MAGNITUDE UPON PETITIONER'S CONVICTION THAT WOULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE DURING THE TIME HIS CONVICTION WAS OPEN TO CHALLENGE.
11. Administrative Review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:
- _____

- b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Superior Court of California, County of Santa Clara.

(2) Nature of proceeding (for example, "habeas corpus petition"): HABEAS CORPUS PETITION.

(3) Issues raised: (a) TRIAL COURT'S MISINTERPRETATION OF LAW, VIOLATED DUE PROCESS.

(b) _____

(4) Result (Attach order or explain why unavailable): ORDER ATTACHED, EXHIBIT E. (DENIAL).

(5) Date of decision: JUNE 3, 05

b. (1) Name of court: THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT.

(2) Nature of proceeding: HABEAS CORPUS PETITION.

(3) Issues raised: (a) TRIAL COURT'S MISINTERPRETATION OF LAW, DUE PROCESS VIOLATION.

(b) _____

(4) Result (Attach order or explain why unavailable): ORDER ATTACHED, EXHIBIT E. (DENIAL).

(5) Date of decision: JULY 28, 05.

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) THIS CLAIM IS BASED ON THE RECENT DECISION IN *DEPPLE V. LEWIS* (2004) WHERE THE LAW WAS CLARIFIED, REVEALING THE FACT PETITIONER WAS CONVICTED UNDER A MISINTERPRETED PENAL STATUTE. THIS ERROR OF THE COURT WOULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE DURING THE TIME PETITIONER'S CONVICTION WAS OPEN TO CHALLENGE.

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 8-6-05

Michael J. Woodcock
(SIGNATURE OF PETITIONER)

PROOF OF SERVICE BY MAIL

(C.C.P. §§1013A, 2015.5)

STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

I, Michael J. Woodcock, am a resident of the State of California,
County of Monterey. I am over the age of 18 years and I am/am not a party to the within action.
My business/residence address is P.O. Box 689, Soledad, California, 93960-0689.

On September 6th, 20 05, I served the foregoing:
Petition For Writ of Habeas Corpus.

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage
fully prepaid in the United States mail at Soledad, California, addressed as follows:

ATTORNEY GENERAL
455 GOLDEN GATE AVE. #11000
SAN FRANCISCO, CALIFORNIA
94102-3664

There is regular delivery service by the U.S. Postal Service between the place of mailing
and the places so addressed.

I declare under the penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed this Tues. day of September 6th, 20 05, at
Soledad, California.

/s/ Michael Woodcock

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CASES:

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23	People v. Carter (1998) 60 Cal. App. 4th 752.
24	People v. Lewis (2004) 120 Cal. App. 4th 837.
25	People v. Verlinde (2002) 100 Cal. App. 4th 1146.
26	Brady v. Maryland (1963) 373 U.S. 83.
27	Morissette v. United States Gypsum Co. (1952) 342 U.S. 246.
28	Sandstrom v. Montana (1979) 442 U.S. 510.

1 cont'd CASES:

2 In RE Winship (1970) 397 U.S. 358.

3

4 Attached - Exhibits:

5 A. The information

6 B. The charges - definitions and elements.

7 C. Juror note.

8 D. Verdict form and Abstract of Judgment.

9 E. Superior Court and Court of Appeal denials.

10 F. Excerpt of record.

11 G. Medical report.

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1 Michael J. Woodcock
2 C.D.C. NO. H-27629
3 CORRECTIONAL TRAINING FACILITY
4 P.O. BOX 689 D-112-UP
5 SOLIDAD, CA. 93960-0639
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IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA.

CASE NO. H029069

IN RE.

MICHAEL J. WOODCOCK,
ON HABEAS CORPUS.

PETITION FOR WRIT OF
HABEAS CORPUS AND
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF.

1.

INTRODUCTION

1. The question presented before the California Supreme Court is whether Petitioner's Constitutional Right to Due Process of the Law was violated when trial court's misinterpretational instruction on law invaded the factfinding function of the jury.

Trial court instructed the jury: "the question under penal code section 1203.(e)(3) is the same as it is under penal code section 12022.(a), and that both sections are legally synonymous." (see exhibit C. Juror note.)

Prior to the recent decision in People v. Lewis, (2004) 120 Cal. App. 4th 837, most judges, prosecutors

1.

1 And Attorney's had assumed this to be the Law. However
 2 it was concluded by the Appellate Court's decision in
 3 People v. Lewis (2004), that penal code sections 1203.4
 4 (b) and 12022.7(a) each require different findings of
 5 fact, and therefore cannot be considered "legally synon-
 6 ymous as a matter of law."

7 This clarification of Law has shed errors of
 8 constitutional dimensions upon Petitioner's conviction
 9 that could not have been discovered through due diligen-
 10 ce during the time his conviction was open to challenge.

11 II.

12 Parties

13
 14 2. Petitioner, Michael J. Woodcock is a prisoner
 15 of the State of California, and currently confined in
 16 the Correctional Training Facility (CTF) Soledad Prison.

17 3. Respondent, A. P. Kane is Warden of the Cor-
 18 rectional Training Facility, and as such has legal cust-
 19 ody of Petitioner.

20 4. Respondent, Jeanne Woodford is director of
 21 the California Department of Corrections. She is
 22 legally responsible for the lawful operations of all
 23 prisons in the State of California, including that of
 24 The Correctional Training Facility.

25 III.

26 Statement of Facts

27 5. On September 18, 1997, Petitioner had an
 28 dispute with Rory Hazel, over illegal use of power

1 utilities (PG&E) at a trailer park residence where Petitioner
2 had previously resided with his girlfriend Trina Adams.

3 6. After being informed that he was still being Bill-
4 ed by (PG&E) for ongoing power use at the old residence
5 Petitioner returned to the trailer park to find the cause for
6 the power being consumed. ^{1/} Upon arrival, Petitioner
7 had found that someone had illegally taken up residence
8 within the trailer home in question. There were various
9 lines and cables trailing from a broken junction box
10 (used by the power utilities company) that ran directly
11 into the trailer.

12 7. While Petitioner stood examining the "jerry-
13 rigged" lines, Rory Hazel exited the trailer, confronting
14 Petitioner asking "What are you doing here?" Petitioner
15 explained to Hazel that he had previously resided at the
16 trailer but since moving to his new apartment, he is
17 still receiving bills in connection with the trailer. Hazel
18 responded by informing Petitioner "the trailer now be-
19 longed to me and his family, and whatever problem Peti-
20 tioner had been having with (PG&E) was no concern of
21 his". When Petitioner informed Hazel "the utilities com-
22 pany would be out to cut the power off", Hazel got up-
23 set and an argument ensued. Hazel began using profanity
24 while poking his finger in Petitioner's face and chest. Pet-
25 itioner slapped Hazel's hand away, and the two began
26 fighting. The altercation ended when Hazel was knocked
27 to the ground. Petitioner had then returned to his home.

28 ^{1/} Petitioner and all residence of the trailer park were given notice
to vacate the park to make room for new housing development. Pet-
itioner returned to the park and found the homeless residing in trailers.

8. Approximately 20 minutes following the incident with Hazel, Police investigator's arrived and confronted Petitioner at his Apartment. Upon questioning Petitioner denied all knowledge of having an altercation with Hazel. After the investigator's were made aware of Petitioner's status on state parole, the parole office was contacted but declined to order Petitioner arrested. The investigator's then instructed Petitioner to stay away from Hazel, and that a misdemeanor battery complaint would be filed against Petitioner, in which the District Attorney had up to one year to charge him with.

9. On November 7, 1997, nearly two months after the altercation with Hazel, Petitioner was arrested and charged with Aggravated Assault, p.c. 245(a)(1). The information also alleged Petitioner had inflicted great bodily injury within the meaning of sections 1202.7(a) and 1203.(e)(3). (See exhibit A). Initially Mr. Hazel could not be contacted for trial, however he was later found in a Kern County jail on unrelated drug charges. Hazel had only testified because he was subpoenaed to do so.

10. On September 29, 1998, the case was given to the jury. (See exhibit B. Jury instructions.). On that same day, the court received a note from the jury requesting a copy of penal code section 1203.(e)(3). (See exhibit C.) Instead of providing the request, the court responded "The question under penal code section

1 1203.(c)(3) is the SAME AS it is under penal code section
 2 1202.7(A), in other words they ARE legally synonymous.
 3 (See exhibit C.)

4 11. On September 30, 1998, the jury found Petition-
 5 er guilty of ASSAULT by MEANS OF FORCE likely to pro-
 6 duce great bodily injury, P.C. 245(A)(1). The jury also
 7 found the Allegation true that Petitioner inflicted great
 8 bodily injury within the meaning of sections 1202.7
 9 (A) and 1203.(c)(3). On February 4, 1999, the court sent-
 10 enced Petitioner under California's three strike law
 11 to a term of 25 years to life, plus a 3 year enhan-
 12 cement for the special finding. (See exhibits D.)

13 PRAYER FOR RELIEF

14 Petitioner is without remedy save for Habeas
 15 Corpus. Wherefore, Petitioner prays that the court:

- 16 1. ISSUE A writ of Habeas Corpus;
- 17 2. ISSUE AN ORDER to show cause;
- 18 3. REVERSE trial court's judgement;
- 19 4. Appoint legal counsel;
- 20 5. Grant any and all further relief that the
- 21 Court may deem just and proper.
- 22

23
 24
 25 Dated: 9-6-05

26 Respectfully Submitted,
 27 Michael L Woodcock
 28 Michael L. Woodcock
 IN PRO PER.

MEMORANDUM OF POINTS AND AUTHORITIES

1. Argument A.

THE TRIAL COURT'S MISINTERPRETATION OF PENAL CODE SECTIONS 1203.(c)(3) AND 12022.7(A) VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT'S TO DUE PROCESS OF THE LAW.

THE INSTRUCTION TO THE JURY THAT PENAL CODE SECTION 1203.(c)(3) BEING LEGALLY SYNONYMOUS WITH SECTION 12022.7(A) WAS A LEGAL DETERMINATION MADE BY THE COURT. HOWEVER, RECENT CASE LAW HAS CONCLUDED THAT BOTH PENAL CODE SECTIONS EACH REQUIRE A DIFFERENT FINDING OF FACT, AND THEREFORE, ARE NOT LEGALLY SYNONYMOUS, "AS A MATTER OF LAW." SEE PEOPLE V. LEWIS (2004) 120 CAL. APP. 4TH 837.)

IN LEWIS (2004), THE DEFENDANT WAS CHARGED AND CONVICTED BY JURY FOR ASSAULTING A CHILD WITH FORCE LIKELY TO PRODUCE GREAT BODILY INJURY RESULTING IN DEATH, WITHIN THE MEANING OF PENAL CODE SECTION 273(A)(6). AT SENTENCING, THE COURT CONCLUDED THAT LEWIS WAS PRESUMPTIVELY INELIGIBLE FOR PROBATION BECAUSE OF INFLECTING GREAT BODILY INJURY WITHIN THE MEANING OF SECTION 1203.(c)(3), HE WAS THEN SENTENCED TO PRISON. (LEWIS AT P. 837.)

LEWIS APPEALED HIS SENTENCE, CONTENDING (AMONG OTHER THINGS), THAT TRIAL COURT MISINTERPRETED PENAL CODE

1 Section 1203.(e)(3) by presumptively denying him
 2 probation. Lewis claimed a defendant would be den-
 3 ied probation under Section 1203.(e)(3), "only if the
 4 trier of fact finds that he (intentionally) inflicted great
 5 bodily injury during the perpetration of the crime."
 6 (Lewis At p. 852.) And in the case of Lewis At (p. 853-
 7 854), there was no such finding that he had "intention-
 8 ally" inflicted great bodily injury.

9 Lewis supported his contention by comparing
 10 this interpretation of Section 1203.(e)(3) with that of the
 11 language of Section 12022.7(a). (which are the same two pen-
 12 al statutes of which petitioner was convicted under and are the sub-
 13 ject of this petition). Lewis explained how each of the two
 14 sections asks a different finding by the trier of fact. (Le-
 15 wis At p. 853.)

16 Section 12022.7(a) enhances a defendant's sent-
 17 ence but requires a finding that he "personally inflicted
 18 great bodily injury." This section has been interpreted to
 19 require only a general criminal intent, i.e., the defendant
 20 need not intend great bodily injury. (Lewis At p. 853, citing
 21 People v. Veelinde (2002) 100 Cal. App. 4th 1146, [123 Cal. Rptr.
 22 2d 322]; People v. Carter (1998) 60 Cal. App. 4th 752, 755-756
 23 [70 Cal. Rptr. 2d 569].)

24 Section 1203.(e)(3) presumptively denies a def-
 25 endant probation if he or she "willfully inflicted great
 26 bodily injury or torture in the perpetration of the crime."
 27 (Lewis At p. 852.) It was Lewis's claim that the inclus-
 28 ion of the word "willfully" in Section 1203.(e)(3), suggests

1 that it was the intent of the Legislature that this penal
 2 code section be applicable to a defendant "not merely
 3 because great bodily injury had resulted during the comm-
 4 ission of the crime, but rather, when the defendant "int-
 5entionally inflicted it" while in the perpetration of the
 6 crime. (Lewis at p. 853.)

7 Accepting Lewis's contention, the Court of
 8 Appeal recognized an uncertainty in the law, and determin-
 9 ed that Section 1203.1(c)(3) includes within its language
 10 the "element of intent" by its definition of great bodily
 11 injury. (Lewis at p. 854.) The court held "Lewis would
 12 be denied probation, only if trial court finds that
 13 he (intentionally) inflicted great bodily injury". Trial
 14 court's decision to deny Lewis probation was rever-
 15 sed, he was then remanded for resentencing consid-
 16 erations.

17 Petitioner contends that the interpretation of
 18 Section 1203.1(c)(3) as defined by the Court of Appeal in
 19 Lewis (2004), was contrary to what trial court had
 20 instructed Petitioner's jury in the instant case. (Comp-
 21 are Lewis (2004) with exhibit C. Judge note.) Lewis
 22 suggests trial court's instruction that pen. code sections
 23 1203.1(c)(3) and 12022.7(a) being "legally synonymous",
 24 was an incorrect interpretation of the law. (Lewis at
 25 p. 853 both sections are defined.) More significantly,
 26 Petitioner's Constitutional right to Due Process of the
 27 law was violated where trial court's instruction had
 28 the effect of relieving the state of its burden of

1 having to prove that Petitioner "intentionally inflicted
 2 great bodily injury AS proscribed within the meaning
 3 of Section 1203.21(b)". (People v. Lewis (2004) 120 Cal. App
 4 4th 837.)

5 Penal Code Section 1203.21(b) WAS just AS
 6 much A part of the Allegation Against Petitioner
 7 AS WAS SECTION 12022.7A). AS explained In Winship
 8 (1970) 397 U.S. 358, this Court stated: "Least there
 9 remain any doubt about the Constitutional stature of
 10 the reasonable doubt standard, we explicitly hold that
 11 the Due Process Clause protects the accused against
 12 conviction except upon proof beyond a reasonable doubt
 13 (of every fact) necessary to constitute the crime with
 14 which he is charged". Id., at 364, 25 L Ed 2d 368, 90
 15 S. Ct 1068.

16 The Court of Appeal Agreed with Lewis (2004)
 17 that the "intent" of the defendant WAS indeed AN "ESSE-
 18 ntial element" of the criminal conduct being proscri-
 19 bed within the meaning of Section 1203.21(b). (Lewis
 20 at p. 854.) In Morissette v. United States (1952) 342
 21 U.S. 246, 96 L. Ed. 288, 72 S. Ct. 2401, the Supreme
 22 Court held "where (intent) of the accused is an ingre-
 23 dient" of the crime charged, its existence is ... A
 24 jury issue", and that trial court's may not withdraw
 25 or prejudice the issue by instruction that raises A
 26 presumption of "intent" from an act.

27 In the instant case, trial court created an
 28 impermissible presumption of "the facts" surrounding

1 the Allegation of Petitioner Violating the law within the
2 meaning of penal code sections 1203.(e)(3) and 12022.7(a).

3 Where the Court did not provide an interpret-
4 ation for section 1203.(e)(3) on it's own motion, the jury
5 in this case felt it was necessary to consider "all of
6 the accusations" against Petitioner, therefore, they re-
7 quested that the Court provide them with a copy of penal
8 code section 1203.(e)(3). (See exhibit C. Juror note.)

9 Trial Court's instruction that ("their question
10 under penal code section 1203.(e)(3) is the same as it is
11 under penal code 12022.7(a)") left the jury with an con-
12 clusive presumption that a finding under section 12022-
13 7(a)'s interpretation of great bodily injury, would mean
14 that it can be assumed a finding under section 1203.(e)(3)
15 also.

16 Trial Court's instruction was unconstitutional
17 where an presumption of the facts violates the United
18 States Supreme Court's holding in the case of Sandstrom
19 v. Montana (1979) 442 U.S. 510, 61 L. Ed. 2d 39, 99 S. Ct. 2450,
20 "where a jury interprets a judge's instruction as either
21 being a burden-shifting presumption or a conclusive
22 presumption, it would violate a defendant's constitut-
23 ional right to due process of the law" (Id., at 524, 61
24 L. Ed. 2d 39, 99 S. Ct. 2450.) And in the instant case, trial
25 Court's instruction had the effect of both impermissible
26 presumptions which denied Petitioner his Federal Cons-
27 titutional right that the state prove him guilty beyond a
28 reasonable doubt, as required within Due Process of law.

1 B. Superior Court's Summary denial
 2 did not properly consider the issues
 3 raised by Petitioner.

4 Superior Court denied Petition without add-
 5 ressing the claims presented before them. (See exhibits -
 6 E. Superior and Court of Appeal denials.)

7 Superior Court opined that Petitioner was
 8 not prejudiced by trial court's error, this was erroneous.
 9 Although Petitioner concedes that he was statutorily
 10 ineligible for probation, it was never a factor to be
 11 considered by the court, i.e., "A 3 strikes case". However, the
 12 issue that was presented to Superior Court was not a
 13 question of Petitioner's probation eligibility, but rather
 14 his right to due process of the law being violated and
 15 resulting in his conviction.

16
 17 C. Trial Court's instructional error
 18 was not harmless beyond a
 19 reasonable doubt.

20 Trial Court's error was not harmless beyond
 21 a reasonable doubt. With the correct interpretation for
 22 Penal Code 1203.0(b), (how it differs from section 1202.7(a))
 23 it is reasonably likely a result more favorable to Petitioner
 24 would have resulted. Examination of the record reveals
 25 there is nothing to suggest Petitioner "intentionally" infl-
 26 icted great bodily injury during his altercation with Mr.
 27 Hazel. Not even the fact that the prosecutor in this case
 28 falsely accused Petitioner of "breaking Mr. Hazel's jaw".

1 (Compare exhibit F. Vol IV CT. 307 Ln. 11-15, to exhibit G.
 2 Medical report.) As the record clearly shows a deliberate
 3 deception of trial and jury, when the prosecutor acc-
 4 used Petitioner of inflicting injuries that were not med-
 5 ically proven to be true. However, the prosecutor was
 6 adamant about deceiving the jury where he stated:
 7 "Hazel's broken jaw as being a concrete fact." (CT. 307 Ln-
 8 13, 14.)

9 This type of misconduct by the prosecutor
 10 was unconstitutional where it violated the United
 11 States Supreme Court's holding in *Brady v. Maryland*
 12 (1963), 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194, this
 13 Court held that a prosecutor violates Due Process:
 14 "When a state has contrived a conviction through
 15 the pretense of a trial which in truth is but used
 16 as a means of depriving a defendant of liberty. The-
 17 rough a deliberate deception of court and jury." (Id. At
 18 p. 83, 86, citing *Mooney v. Holohan* 294 U.S. 103, 112.)
 19 In the instant case, the prosecutor knew that the
 20 medical report showed reasonable doubt of the
 21 severity of Hazel's injuries, and without the decept-
 22 ion at trial, a result more favorable to Petitioner
 23 would have likely resulted.

24 Conclusion

25
 26 Lewis (2004), is certainly applicable to the
 27 present case. It clarified the law regarding penal
 28 Code sections 1203.(e)(3) and 12022.7(a). Here, as in

1 Lewis, the trial court misinterpreted the Legislative dist-
2 inction between these two statutes, and what they
3 required of the trier of fact.

4 Therefore, because of the misinterpretation
5 of the law, trial court's instruction creating an imp-
6 ermissible presumption on a question of fact, combine
7 all this with prosecutorial misconduct, you will find
8 that Petitioner is actually innocent of the allegation
9 of inflicting great bodily injury.

10 The fundamental unfairness of the process
11 to which Petitioner was subjected to at trial, his
12 conviction stands on constitutionally infirm grounds
13 and must be reversed. For these reasons as stated,
14 Petitioner prays that the court will grant a writ
15 of Habeas Corpus.

16
17
18 Dated: 9-6-05

Respectfully Submitted,
Michael J. Woodcock
MICHAEL J. WOODCOCK
In Pro Per.

EXHIBIT "A"

NO. _____

(The Information)

The Information in this case charges that the defendant, MICHAEL JEROME WOODCOCK committed the following felonies, to wit:

COUNT ONE

That in the County of Santa Clara, State of California, on or about September 18, 1997, the said defendant, MICHAEL JEROME WOODCOCK, , committed a felony, to wit: a violation of CALIFORNIA PENAL CODE SECTION 245(A)(1) (ASSAULT BY MEANS OF FORCE LIKELY TO PRODUCE GBI) in that the said defendant did commit an assault upon the person of RORY HAZEL, by means of force likely to produce great bodily injury.

It is further alleged that in the commission and attempted commission of the foregoing offense, the said defendant, MICHAEL JEROME WOODCOCK, , personally inflicted great bodily injury upon a person not an accomplice, to wit: RORY HAZEL, within the meaning of Sections 12022.7(a) and 1203(e)(3) of the Penal Code.

Judge

EXHIBIT "B"

PART IV – The Charges – Definitions and Elements

CALJIC 3.30 CONCURRENCE OF ACT AND GENERAL CRIMINAL INTENT

3.30

In the crime and allegation charged in Count 1, and the crime of assault which is a lesser crime, there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.

CALJIC 9.00 ASSAULT – DEFINED (Pen. Code, §240)

9.00

Every person who commits an assault upon another person is guilty of a violation of Penal Code section 240, a crime.

In order to prove an assault, each of the following elements must be proved:

1. A person willfully and unlawfully committed an act which by its nature would probably and directly result in the application of physical force on another person; and
2. At the time the act was committed, the person had the present ability to apply physical force to the person of another.

"Willfully" means that the person committing the act did so intentionally.

To constitute an assault, it is not necessary that any actual injury be inflicted. However, if an injury is inflicted it may be considered in connection with other evidence in determining whether an assault was committed and, if so, the nature of the assault.

CALJIC 9.02
ASSAULT WITH BY
MEANS OF FORCE LIKELY TO PRODUCE
GREAT BODILY INJURY
(Pen. Code, § 245, subd. (a)(1), (2))

9.02

Defendant is accused in Count 1 of having violated section 245, subdivision (a)(1) of the Penal Code, a crime.

Every person who commits an assault upon the person of another by means of force likely to produce great bodily injury is guilty of a violation of section 245, subdivision (a)(1) of the Penal Code, a crime.

Great bodily injury refers to significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or moderate harm.

In order to prove this crime, each of the following elements must be proved:

1. A person was assaulted; and
2. The assault was committed by means of force likely to produce great bodily injury.¹

GREAT BODILY INJURY – FURTHER EXPLAINED

9.02A

Great bodily injury does not require that the victim suffer permanent, prolonged, or protracted disfigurement, impairment, or loss of bodily functions. Evidence of multiple abrasions and lacerations, swelling, and bruising may or may not constitute great bodily injury, depending on their severity and the facts of the case.

CALJIC 17.20
INFLICTION OF GREAT BODILY HARM
(Pen. Code, 12022.7(a))

17.20

It is alleged that in the commission or attempted commission of the crime therein described the defendant personally inflicted great bodily injury on a person not an accomplice to the crime.

If you find a defendant guilty of Assault with Force Likely to do Great Bodily Injury as charged in Count 1, you must determine whether that defendant personally inflicted great bodily injury on some person not an accomplice to the crime in the commission or attempted commission of the crime charged in Count 1.

"Great bodily injury," as used in this instruction, means a significant or substantial physical injury. Minor, trivial or moderate injuries do not constitute great bodily injury.

The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true.

Include a special finding on that question in your verdict, using a form that will be supplied for that purpose.

CALJIC 9.08
ASSAULT WITH HANDS OR FISTS

9.08

An assault by means of force likely to produce great bodily injury may be committed with the hands or fists. Proof of such an assault need not show that the defendant actually injured the other person. However, there must be proof that the manner of the assault was likely to produce great bodily injury upon another person.

CALJIC 9.11
INSULTING WORDS – NOT JUSTIFICATION
FOR ASSAULT

9.11

No oral words of abuse, insult or reproach addressed to or said about a person, however insulting or objectionable the words may be, if unaccompanied by any threat or apparent threat of great bodily injury, or any assault upon the person will justify an assault by any means of force likely to produce great bodily injury. The provocation of words alone does not constitute a defense to a charge of having committed such an assault.

CALJIC 17.10
CONVICTION OF LESSER INCLUDED
OR LESSER RELATED OFFENSE – IMPLIED
ACQUITTAL-FIRST

17.10

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, you may nevertheless convict him of any lesser crime, if you are convinced beyond a reasonable doubt that the defendant is guilty of the lesser crime.

The crime of Assault is lesser to that of Assault By Means of Force Likely to Do Great Bodily Injury charged in Count 1.

Thus, you are to determine whether the defendant is guilty or not guilty of the crime charged or of any lesser crime. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it productive to consider and reach a tentative conclusion on all charges and lesser crimes before reaching any final verdict. However, the court cannot accept a guilty verdict on a lesser crime unless you have unanimously found the defendant not guilty of the charged crime.

Part V – Concluding Instructions

CALJIC 17.30
JURY NOT TO TAKE CUE FROM THE JUDGE

17.30

I have not intended by anything I have said or done, or by any questions that I may have asked, or by any ruling I may have made, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own conclusion.

EXHIBIT "C"

Received by:
Date:
Time:

Jury Note # 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

vs

MICHAEL JEROME WOODCOCK

Defendant,

No. 202097

We, the jury in the above-entitled cause, request the following:

Copy of Penal Code Section 1203(e)(3)

The question under 1203(e)(3) is the same as it
is under 12022.7 of the Penal Code.

In other words, they are legally synonymous

- J. Lee

Date: 9/29

#1

123A

EXHIBIT "D"

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 THE PEOPLE OF THE STATE)
4 OF CALIFORNIA,) Information No. 202097
5 Plaintiff,)
6 vs.) VERDICT OF THE JURY
7 MICHAEL JEROME WOODCOCK,)
8 Defendant.)
9
10 COUNT ONE
11 WE, the Jury, in the above-entitled case, find the Defendant,
12 MICHAEL JEROME WOODCOCK, GUILTY of a Felony, to wit:
13 (Guilty/Not Guilty)
14 (ASSAULT BY MEANS OF FORCE LIKELY TO PRODUCE GREAT BODILY INJURY), in
15 violation of Penal Code Section 245(A)(1), as charged in Count One of
16 the Information.
17 WE, the Jury, find the allegation that in the commission and
18 attempted commission of the foregoing offense, the said defendant,
19 MICHAEL JEROME WOODCOCK, personally inflicted great bodily injury upon
20 a person not an accomplice, to wit: RORY HAZEL, within the meaning of
21 Sections 12022.7(a) and 1203(e)(3) of the Penal Code to be
22 TRUE
23 (True/Not True)
24
25 LESSER INCLUDED OFFENSE
26 WE, the Jury, in the above-entitled case, find the Defendant,
27 MICHAEL JEROME WOODCOCK, _____ of a Misdemeanor, to
28 (Guilty/Not Guilty)
29 wit: (ASSAULT), in violation of Penal Code Section 240, as charged in
30 Count One of the Information.
31 DATED: September 30, 1998
32
33 #1
34 FOREPERSON

copy attached to m.o.

CR-292

ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

<input checked="" type="checkbox"/> SUPERIOR <input type="checkbox"/> MUNICIPAL	COURT OF CALIFORNIA, COUNTY OF: <u>SANTA CLARA</u> BRANCH OR JUDICIAL DISTRICT: <u>HALL OF JUSTICE</u>		
PEOPLE OF THE STATE OF CALIFORNIA vs. DOB: <u>1/13/66</u> DEFENDANT: <u>MICHAEL JEROME WOODCOCK</u>		<u>202097</u>	-A
AKA:			-B
CIR:			-C
BOOKING #: <u>97537826</u> <input type="checkbox"/> NOT PRESENT			-D
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT <input type="checkbox"/> AMENDED ABSTRACT			
DATE OF HEARING <u>02 04 99</u>	DEPT. NO. <u>90</u>	JUDGE <u>EDWARD F. LEE</u>	
CLERK <u>C. JOHNSON</u>	REPORTER <u>B. PASTORINO</u>	PROBATION NO. OR PROBATION OFFICER <u>J. HAMILTON</u>	
COUNSEL FOR PEOPLE <u>J. LUFT</u>		COUNSEL FOR DEFENDANT <input checked="" type="checkbox"/> APPTD <u>D. LEE-ADO</u>	

1. Defendant was convicted of the commission of the following felonies:

☒ Additional counts are listed on attachment1 (number of pages attached)

CNT	CODE	SECTION NO	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO/DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	94 DAY
						JURY	COURT	PLEA			
01	PC	245A(1)	ASSAULT BY MEANS OF FORCE LIKELY TO -PRODUCE GREAT BODILY INJURY	97	09/30/98	x					
					/ /						
					/ /						
					/ /						
					/ /						

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
01	12022.7A	3y							3 0

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC667(b-i)	*	PC667(b-i)	*	PC667(b-i)	*			
PC667(a)	S	PC667(a)	S					
PC667.5(b)	S	PC667.5(b)	S					

Defendant was sentenced to State Prison for an INDETERMINATE TERM:

4. ☐ For LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____
 5. ☐ For LIFE WITH POSSIBILITY OF PAROLE on counts _____
 6. ☒ For 25 years to life, WITH POSSIBILITY OF PAROLE on counts 1

PLUS enhancement time shown above.

7. ☒ Additional determinate term (see CR-290). 3yrs8. Defendant was sentenced pursuant to ☒ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ PC 667.9
☐ other (specify): _____

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

(Continued on reverse)

Exhibit A-1

EXHIBIT "E"

FILED

JUN 7 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY Bart DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

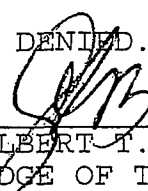
In re)
MICHAEL JEROME WOODCOCK,) No.: 202097
On Habeas Corpus) ORDER

Petitioner, MICHAEL JEROME WOODCOCK, has filed a petition for writ of habeas corpus in which he claims that part of his conviction was invalid due to the recent case of *People v. Lewis* (2004) 120 Cal.App.4th 837. Specifically, Petitioner argues that the Court incorrectly instructed the jury regarding the willful element of Penal Code § 1203(e)(3).

However, even assuming there was instructional error (compare CT 123A with *People v. Lewis* (2004) 120 Cal.App.4th 837, 853), any error could not have prejudiced Petitioner as he was already statutorily ineligible for probation under Penal Code § 667(c)(2) due to his multiple "strike priors."

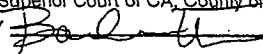
The petition is respectfully DENIED.

DATED: June 3, 2005


GILBERT T. BROWN
JUDGE OF THE SUPERIOR COURT

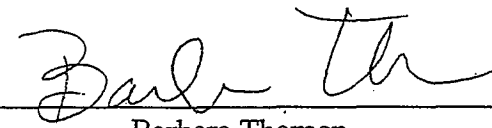


cc: Petitioner
District Attorney
Research
File

<p>IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA</p> <p><u>Plaintiff:</u> PEOPLE OF THE STATE OF CALIFORNIA</p> <p><u>Defendant</u> Michael Jerome Woodcock</p>	<p>FILED</p> <p>JUN 7 2005</p> <p>KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara BY  DEPUTY</p>
<p>PROOF OF SERVICE BY MAIL OF: ORDER RE: Writ of Habeas Corpus</p>	<p>CASE NUMBER: 202097</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA 6-07-05. I declare under penalty of perjury that the foregoing is true and correct.

KIRI TORRE, Chief Executive Officer

By  Clerk
Barbara Thomen

Michael Woodcock H-27629 D-229u
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960-0689

Research Attorney/Criminal Division

* Placed in Research Attorney's mail box at
Hall of Justice

CJIC

*Placed in CJIC mail box at Hall of Justice

Office of the District Attorney, Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

* Place in District Attorney Pickup Box*

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re MICHAEL JEROME WOODCOCK,
on Habeas Corpus.

H029069
(Santa Clara County
Super. Ct. No. 202097)

FILED

JUL 28 2005

Court of Appeal - Sixth App. Dist.
MICHAEL J. YERLY, Clerk

BY _____ DEPUTY

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., McAdams, J., and Duffy, J.,
participated in this decision.)

Dated JUL 28 2005 BAMATTRE - MANOUKIAN, J. Acting P.J.

EXHIBIT "F"

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 BEFORE THE HONORABLE EDWARD F. LEE, JUDGE
4 DEPARTMENT NO. 38

5
6 PEOPLE OF THE STATE OF CALIFORNIA,)
7 PLAINTIFFS,)
8 VS.)
9 MICHAEL JEROME WOODCOCK,)
10 DEFENDANT.)
11 _____)

COPY

CASE NO. 202097

12
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 SEPTEMBER 29, 1998

15 VOLUME IV
16 (PAGES 282 - 322)

17
18
19 A P P E A R A N C E S

20
21 FOR THE PLAINTIFFS: JOHN LUFT
22 DEPUTY DISTRICT ATTORNEY

23 FOR THE DEFENDANT: DENISE LEE
24 DEPUTY PUBLIC DEFENDER

25
26
27
28 OFFICIAL COURT REPORTER: SONIA J. BOUGHTON, C.S.R. NO. 8153

1 DAMNING WEAPONS, EVEN MORE SO THAN HANDS. AND AT THAT
2 POINT, IT DOESN'T SOUND LIKE A FAIR FIGHT BETWEEN 2 FELLOWS
3 JOUSTING, USING MARQUISATE QUEENSBURY RULES AND HONOR AND
4 ALL THAT STUFF.

5 FURTHER, WE DON'T HAVE ANY EXPERT TESTIMONY TO SUGGEST
6 THAT EVEN IF A GOOD PORTION OF THE DAMAGE WAS DONE WITH
7 FISTS, THAT IT WOULD NECESSARILY HAVE LEFT ANY IDENTIFIABLE
8 MARKS ON THE HANDS OF MR. WOODCOCK.

9 THE WHOLE ISSUE, LADIES AND GENTLEMEN, IS LARGELY A RED
10 HERRING. BECAUSE THE BOTTOM LINE NEVER SHIFTS OR CHANGES.
11 MR. HAZEL WAS FOUND UNCONSCIOUS, BLEEDING PROFUSELY, WITH A
12 FRACTURED JAW AND LACERATION THAT REQUIRED SUTURING. AND
13 THAT'S A CONCRETE FACT THAT WON'T CHANGE, JUST LIKE THE
14 CONCRETE FACT THAT IT WAS MR. WOODCOCK THAT DELIVERED THOSE
15 INJURIES.

16 AND THEN MS. LEE SUGGESTS TO YOU THAT RORY HAZEL WAS
17 TAKING UTILITIES THAT DID NOT BELONG TO HIM. AND IN MY
18 OPENING STATEMENT TO YOU, MY OPENING ARGUMENT TO YOU
19 PLAINTIFFS GET, I POINTED TO THAT A LITTLE MYSELF. BUT IF
20 THAT WERE TRUE, IT IN NO WAY JUSTIFIES THE CONDUCT OF
21 MR. WOODCOCK.

22 I DON'T WANT TO LEAVE YOU WITH THE IMPRESSION, HOWEVER,
23 THAT I AGREE THAT IT WAS TRUE THAT MR. HAZEL WAS TAKING
24 UTILITIES THAT DID NOT BELONG TO HIM. TO THE CONTRARY. AS
25 YOU'LL RECALL THE EVIDENCE, IT WAS THAT THE ELECTRICITY
26 COMES TO EVERY UNIT AT THAT TRAILER PARK AS PART OF THE
27 RENT. THE TRAILER PARK PAYS FOR THAT.

28 SO MR. WOODCOCK, ACTING AS THE LONG ARM OF TRINA ADAMS

EXHIBIT "G"

AFFIDAVIT OF CUSTODIAN OF MEDICAL RECORDS
TO ACCOMPANY COPIES OF RECORDS AS REQUIRED BY
EVIDENCE CODE SECTION 1561

Elva B. Chavez

(Custodian of Medical Records)

says as follows:

(a) That affiant is the duly authorized custodian of the Sunnyvale Medical Clinic, Inc. and has authority to certify said records, and

(b) That the copy of the medical records attached to this Affidavit is a true copy of all the records described in the subpoena duces tecum, and

(c) That the records were prepared by the personnel of the clinic, staff physicians, or persons acting under the control of either, in the ordinary course of Clinic business at or near the time of the act, condition or event.

I declare under penalty of perjury that the foregoing is true and correct.

Elva B. Chavez
(Signature of Affiant)

If the Clinic has none of the records described or only a part of the records, the custodian must so state in the Affidavit and deliver the Affidavit and such records as are available in the manner described above.

No. 202097 Exh # 3

☒ Identification

☒ Admitted

PEOPLE vs

Woodcock

Date

SEP 24 1998

Clerk

C. JOHNSON

EL CAMINO HOSPITAL
SAUNDRA MILLS, MD

EMERGENCY VISIT HISTORY

CC: EMERGENCY DEPARTMENT

DATE:

9/18/97

DATE SEEN:

ADDENDUM:

This is a patient who was seen by Dr. Curtis and had a laceration sutured. The physical exam was by Dr. Curtis. The patient was turned over to me to just review the x-ray and make a deposition.

The patient had facial x-rays and mandible x-rays. There was a questionable nondisplaced mandible fracture on the right. I reexamined the patient and his main pain in the mandible was on the left. He did not have any malocclusion. There was no bruising inside the mouth. So, it is questionable if this is a fracture. I did inform him that the x-ray will be read by the radiologist tomorrow morning and we would contact him if this truly was a fracture. He was also given a number that he could call and check on that.

In the meantime, he was advised to use ice packs and have soft foods and liquids only. He was given an ENT follow-up referral sheet for follow-up.

DIAGNOSIS:

1. Status post assault.
2. Acute right cheek laceration 1.5 cm.
3. Acute facial contusions.
4. Subconjunctival hemorrhage, right eye.
5. Questionable nondisplaced mandible fracture.

CONDITION:

Stable.

SM :TL107 6413

SAUNDRA MILLS, MD

D: 09/19/97

T: 09/22/97 8:25:58 AM

12/04/97 12:18 PM

2500 GRANT ROAD
MOUNTAIN VIEW, CA. 94042

PAGE 002
(QAF\$SP)

TEST

M 39 EDIS

ADM: 09/18/97 M.S: M

CURTIS, MICHAEL MD

CARE COORDINATOR: UNASSIGNED

TEST RESULTS SUMMARY

REPORT PERIOD: ALL RESULTS IN MIS AS OF 12:18 PM 12/04/97

RADIOLOGY RESULTS: FILE #663389

R261-0251 05:40 PM 09/19/97
1.01 MANDIBLE, 09/18/1997:

RADIOLOGIST: KARRAS, B.G., M.D. -

MANDIBLE, 09/19/97:

FILMS OF THE MANDIBLE SHOW A FAINT LINEAR RADIOLUCENCY EXTENDING FROM ONE OF THE IMPACTED MOLARS. IT IS DIFFICULT TO BE CERTAIN WHICH SIDE THIS IS PRESENT ON. IF THIS REPRESENTS A FRACTURE IT IS UNDISPLACED. NO OTHER ABNORMALITIES ARE SEEN. IT MAY BE OF VALUE TO OBTAIN ADDITIONAL VIEWS OF THE MANDIBLE UNDER RADIOLOGIST'S DIRECTION TO MAKE CERTAIN THERE IS A FRACTURE AND TO DETERMINE ON WHICH SIDE IT IS.

R261-0252 05:40 PM 09/19/97
2.01 ORBITAL STUDY, 09/18/1997:

RADIOLOGIST: KARRAS, B.G., M.D. -

ORBITAL STUDY, 09/19/97:

NO FRACTURES ARE IDENTIFIED IN THE ORBITS. BONY MARGINS APPEAR INTACT. ADJACENT MAXILLARY ANTRA APPEAR NORMAL.

ALL CURRENT TEST AND DISCHARGE ORDERS

THIS PATIENT HAS NO CURRENT MEDICAL ORDERS

LAST PAGE

HAZEL RORY

663389001

TEST RESULTS SUMMARY

-*-

EXHIBIT 5

FILED

JUN 7 2005

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY Bark DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re

MICHAEL JEROME WOODCOCK,

On Habeas Corpus

No.: 202097

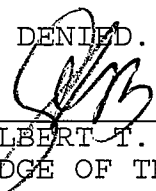
ORDER

Petitioner, MICHAEL JEROME WOODCOCK, has filed a petition for writ of habeas corpus in which he claims that part of his conviction was invalid due to the recent case of *People v. Lewis* (2004) 120 Cal.App.4th 837. Specifically, Petitioner argues that the Court incorrectly instructed the jury regarding the willful element of Penal Code § 1203(e)(3).

However, even assuming there was instructional error (compare CT 123A with *People v. Lewis* (2004) 120 Cal.App.4th 837, 853), any error could not have prejudiced Petitioner as he was already statutorily ineligible for probation under Penal Code § 667(c)(2) due to his multiple "strike priors."

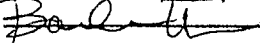
The petition is respectfully DENIED.

DATED: June 3, 2005


GILBERT T. BROWN
JUDGE OF THE SUPERIOR COURT




cc: Petitioner
District Attorney
Research
File

<p>IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA</p> <p><u>Plaintiff:</u> PEOPLE OF THE STATE OF CALIFORNIA</p> <p><u>Defendant</u> Michael Jerome Woodcock</p>	<p>FILED</p> <p>JUN 7 2005</p> <p>KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara BY  DEPUTY</p>
<p>PROOF OF SERVICE BY MAIL OF: ORDER RE: Writ of Habeas Corpus</p>	<p>CASE NUMBER: 202097</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA 6-07-05. I declare under penalty of perjury that the foregoing is true and correct.

KIRI TORRE, Chief Executive Officer

By  Clerk
Barbara Thomen

Michael Woodcock H-27629 D-229u
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960-0689

Research Attorney/Criminal Division

* Placed in Research Attorney's mail box at
Hall of Justice

CJIC

*Placed in CJIC mail box at Hall of Justice

Office of the District Attorney, Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

* Place in District Attorney Pickup Box*

EXHIBIT 6

S137247

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MICHAEL J. WOODCOCK on Habeas Corpus

Petition for writ of habeas corpus is DENIED.

SUPREME COURT
FILED

JUN 28 2006

Frederick K. *[Signature]* Clerk
DEPUTY

[Signature]
Chief Justice